

### REMARKS

Applicant appreciates the thorough examination of the present application as evidenced by the Final Office Action mailed June 27, 2008 (hereinafter "Final Action"). Applicant especially appreciates the indication that Claims 2 – 8 and 10 are patentable over the cited art of record. In response, Applicant has amended independent Claim 1 to include recitations from dependent Claims 2 and 3 and amended independent Claim 12 to include the recitation from dependent Claim 2 to overcome the Section 101 and 102 rejections. Dependent Claims 2 and 3 have been canceled without prejudice or disclaimer and various dependent claims have been amended to correct their dependencies in light of the cancellation of dependent Claim 2. Accordingly, Applicant submits that all pending claims are in condition for allowance. Favorable reconsideration of all pending claims is respectfully requested for at least the reasons discussed hereafter.

#### **Section 101 Rejection**

Claims 1, 2, and 9 - 11 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. (Final Action, page 2). The Final Action states, however, that dependent Claims 3 – 8 satisfy the requirements of 35 U.S.C. §101. (Final Action, page 2). In response, Applicant has amended independent Claim 1 to include the recitations of dependent Claims 2 and 3. In view of the amendment to Claim 1, Applicants submit that Claims 1 and 4 – 11 qualify as statutory subject matter 35 U.S.C. §101.

#### **Claims 12 - 14 are Patentable**

Independent Claims 12 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent Publication No. 2002/0122559 to Fay et al. (hereinafter "Fay"). (Office Action, page 2). Independent Claim 12 is directed to a mobile terminal adapted to store and reproduce a score in the format of a MIDI file and has been amended to further clarify the description of the processing means by incorporating the recitation from Claim 2 directed to determining a gain factor. Claim 12, as amended, recites in part:

...  
processing means for rendering sampled data from the MIDI file, the  
processing means being configured to determine a gain factor from a

comparison of an identified maximum absolute value of the sampled data with a limit value defined for the electroacoustic reproduction circuitry;  
... (Emphasis added)

The Final Action does not cite any prior art reference as disclosing the recitation from dependent Claim 2 directed to determining a gain factor from a comparison of an identified maximum absolute value of sampled data with a limit value defined for electroacoustic reproduction circuitry, which has been incorporated into independent Claim 12.

For at least the foregoing reasons, Applicant submits that independent Claim 12 is patentable over Fay and that dependent Claims 13 and 14 are patentable at least by virtue of their depending from an allowable claim.

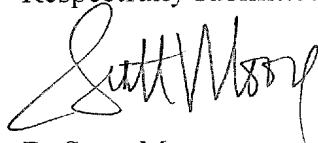
#### **Claims 1 and 4 - 11 are Patentable**

Independent Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by the Ketron SD-1 Mastering Studio webpage (hereinafter "Ketron"). (Final Action, page 2). As stated above, independent Claim 1 has been amended to incorporate the recitations of dependent Claims 2 and 3, which are not rejected based on any prior art reference. Accordingly, Applicant submits that independent Claim 1 is patentable over Ketron and that dependent Claims 4 – 11 are patentable at least by virtue of their depending from an allowable claim.

#### **CONCLUSION**

In light of the above amendments and remarks, Applicant respectfully submits that the above-entitled application is now in condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (919) 854-1400.

Respectfully submitted,



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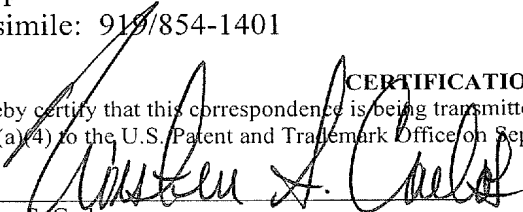
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**CERTIFICATION OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on September 26, 2008.

  
Kirsten S. Carlos